

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Mr. George Anderson, Jr.
32804 Oak Orchard
Millsboro, DE 19966

Thomas H. Ellis, Esquire
Deputy Attorney General
820 N. French Street, 6th Floor
Wilmington, DE 19801

Re: ***Anderson v. Unemployment Insurance Appeal Board***
C.A. No. S10A-01-009 RFS

Decision of the Unemployment Insurance Appeals Board. Affirmed.

Submitted: August 8, 2011
Decided: September 29, 2011

Dear Mr. Anderson and Counsel:

Claimant George Anderson has appealed a decision of the Unemployment Insurance Appeal Board (“Board”). The Board found that Claimant is liable for a repayment of \$10,890.00 in unemployment benefits made due to a mistake on the part of the Department of Labor, Division of Unemployment Insurance (“Division”). Based on the record, the briefs and the applicable law, the Board’s decision is affirmed.

After being laid off from his job, Claimant was awarded unemployment benefits in January 2007 at a rate of \$330 per week. He went back to work in April 2007, but was laid off four weeks later in May 2007. During this time, he earned \$2860.00, which

would have qualified him to collect benefits of \$62 per week on a new State claim. However, the Division continued to pay him \$330 per week based on his wages at the previous job.

In August 2007, Claimant's State benefits were exhausted. In July 2008, as required by federal law, the Division made a mass mailing to individuals whose benefits were exhausted. The letter invited them to apply for a federal extension of their benefits.

Claimant filed for and received the federal extension in the amount of \$330 per week, the same amount he had received in State benefits based on his prior job. He received four extensions and received \$6600.00 for the period of July 12, 2008 through January 2009, and \$4290.00 for the period from April 2009 through June 2009. The total amount received on the federal extension plan was \$10,890.

When Claimant filed for another extension in July 2009, the Division discovered that it should have been paying Claimant \$62.00 per week on a new State claim from his four weeks of work in April and May 2007. A Division representative explained that the error was discovered on the fifth application because more research is done as more extensions are sought.¹

Hearings were conducted before an appeals referee and the Board. The appeals referee found that Claimant is liable to the Division for the \$10, 890 overpayment under 19 *Del. C.* § 3325. The Board affirmed.

¹Tr. App. Ref. Hrg. at 31-32.

On appeal of a decision of the Board, this Court's function is to determine whether the findings below are based on substantial evidence and the decision is free from legal error.²

Delaware's unemployment insurance recoupment statute provides in part:

Any person who has received any sum as benefits under this chapter to which it is finally determined that the person was not entitled shall be liable to repay in cash said overpayment, to the Department for the Unemployment Compensation Fund, or to have such sum deducted from future benefits payable to the person under this chapter. The person shall be so liable regardless of whether such sum was received through fraud or mistake, or whether that person was legally awarded the payment of benefits at the time but on appeal subsequently found not to be entitled thereto. 19 *Del. C.* § 3325.

Claimant argues that because of the Division's mistake, he should not be liable for the entire overpayment. The Board argues that § 3325 shows the General Assembly's intention to allow for the correction of a Division mistake by way of repayment by a claimant. Claimant acknowledging having signed the form making him aware of the possibility of recoupment.

Section 3325 is a clear and unambiguous statement holding a claimant liable for

²*Smith v. R.A.M Construction Co.* 2010 WL 3946282 (Del. Super.).

repaying an overpayment. Repayment is required whether the overpayment was the result of fraud, mistake or an award later found to be erroneous. There is no provision for shared liability between a claimant and the Division. The case at bar is the result of a mistaken award for which Claimant was subsequently found to be ineligible. Pursuant to § 3325, Claimant is liable for repayment of the monies received in error.

The Board's decision contains no error of law or of fact. The decision is **AFFIRMED** and the appeal is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary